



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
FREEDOM OF INFORMATION ACT BRANCH  
Washington, D.C. 20570

Via email

September 12, 2023

Re: FOIA Request NLRB-2023-002113

Dear Matt Glynn (Buffalo News):

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on September 7, 2023, in which you seek “[d]ocuments related to petition to organize filed by Operating Engineers Local 17 for workers at Covanta Niagara in Niagara Falls, NY, case number 03-RC-325196.” You did not assume financial responsibility for the processing of your request.

We acknowledged your request on September 8, 2023. Because you were identified as a member of the media, your request for expedited processing was granted on September 8, 2023.

Your request is denied in part and granted in part, as explained below.

After conducting a search of the Agency’s electronic casehandling system, NxGen, it is confirmed that the requested case, *Covanta Niagara*, Case No. 03-RC-325196, is a recently filed, open representation case before the Agency’s Region 3 office. As such, I have determined that because certain records responsive to your request are part of an investigative file in an open case, they are exempt from disclosure pursuant to Exemption 7(A) of the FOIA. 5 U.S.C. § 552 (b)(7)(A). Exemption 7(A) allows an agency to withhold records included in an open investigatory file where disclosure could reasonably be expected to interfere with enforcement proceedings. *See NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 236 (1978). That is, given the open status of the requested case pending proceedings in the Region, your request is denied, in part, in that the investigatory records in the case file are being withheld in full at this time pursuant to Exemption 7(A).

Your request is granted to the extent that I have attached the formal records in the case (46 pages), which at this time are the petition, initial letters to the parties and a counsel notice of appearance, and they are available to the public pursuant to NLRB FOIA regulations regardless of the open or closed status of a case. Upon my review, a single redactions has been made to certain information

in these records to protect the privacy interests of an individual named in the records. The redaction was made pursuant to FOIA Exemption 6, which protects personally identifying information the release of which would constitute a clearly unwarranted invasion of personal privacy, and FOIA Exemption 7(C), which protects records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6) and (b)(7)(C).

Please note that Exemption 7(A) protection is “temporal in nature.” *Citizens for Responsibility & Ethics in Wash. v. Dep’t of Justice*, 746 F.3d 1082, 1097 (D.C. Cir 2014) (citing *NLRB v. Robbins Tire*, 437 U.S. 214, 223-24 230-32 (1978)). As such, case file records may become disclosable, subject to applicable exemptions, after the case closes, that is, that is, a certification of results has issued, a bargaining representative has been certified, or the matter is otherwise closed under Agency procedures. Accordingly, you may wish to file a new request at that time.

The status of this case can be tracked on the Agency website at [www.nlr.gov](http://www.nlr.gov) by going to the Cases & Decisions tab, clicking case search, entering the case number in the search box and viewing the case page or by clicking the link here: <https://www.nlr.gov/case/03-RC-325196>.

For the purpose of assessing fees, we have placed you in Category C, as a representative of the news media, in that you qualify as a person “actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.” NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(vii). Accordingly, there is no charge assessed for this request. Given your placement as a news media requester, your request for a fee waiver is moot.

You may contact William T. Hearne, the FOIA Attorney-Advisor who processed your request, at (202) 273-0139 or by email at [william.hearne@nlrb.gov](mailto:william.hearne@nlrb.gov), as well as the Agency’s FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the FOIA Attorney-Advisor, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the Agency’s FOIA Public Liaison is:

Kristine M. Minami, FOIA Public Liaison  
National Labor Relations Board  
1015 Half Street, S.E., 4<sup>th</sup> Floor  
Washington, D.C. 20570  
Email: [FOIAPublicLiaison@nlrb.gov](mailto:FOIAPublicLiaison@nlrb.gov)  
Telephone: (202) 273-0902

Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, Maryland 20740-6001  
Email: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: (202) 741-5770  
Toll free: (877) 684-6448  
Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at:  
<https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt, Chief FOIA Officer  
National Labor Relations Board  
1015 Half Street, S.E., 4<sup>th</sup> Floor  
Washington, D.C. 20570  
Email: [DLCFOIAAppeal@nrlrb.gov](mailto:DLCFOIAAppeal@nrlrb.gov)

Any appeal must be postmarked or electronically submitted within 90 calendar days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the FOIA Attorney-Advisor, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

*/s/ Kristine M. Minami*

Kristine M. Minami  
Acting FOIA Officer

Attachment: (46 pages)